

ORIGINAL

Nextel Communications, Inc.
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NEXTEL

EX PARTE OR LATE FILED

March 2, 2000

Magalie R. Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A-325
Washington, DC 20554

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MAR 02 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: EX PARTE, PR Docket No. 93-144

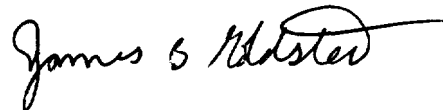
To the Secretary:

Pursuant to Section 1.206 of the Commission's Rules, Nextel Communications, Inc. ("Nextel") hereby provides an original of this letter and two copies of a letter hand delivered on this date to Kathleen O'Brien Ham of the Federal Communication Commission's Wireless Telecommunications Bureau that should be associated with the above-captioned proceeding.

Should any questions arise in connection with this notification, please do not hesitate to contact the undersigned.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.



James B. Goldstein
Attorney – Government Affairs

Attachments

cc: Kathleen O'Brien Ham

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NEXTEL

March 2, 2000

VIA HAND DELIVERY

Kathleen O'Brien Ham
Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 3-C255
Washington, DC 20554

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MAR 02 2000

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: PR Docket No. 93-144 --- Request for Scheduling of Lower 230
Channel Auction and Extension of Upper-200 Channel Involuntary
Relocation Period

Dear Ms. Ham:

As you know, the involuntary negotiation period for relocating 800 MHz upper-200 SMR channel incumbent licensees to other 800 MHz channels commenced on December 4, 1999. The initiation of the involuntary negotiation period followed a very successful voluntary relocation period where Nextel Communications, Inc. ("Nextel"), the Economic Area ("EA") licensee in 475 EAs, not only commenced negotiations with over 90% of the nation's upper-200 channel incumbents, but has already reached agreements to relocate, through acquisitions or "swaps", over 50% of the total number of incumbent channels that must be relocated to achieve contiguous spectrum.

It has become apparent, however, as Nextel and other EA licensees work through the involuntary negotiation period, that the FCC's failure to complete EA licensing of the Lower 230 800 MHz channels ("Lower 230 Channels") is seriously impeding the efforts of both EA licensees and incumbents to negotiate "good-faith" relocation agreements. The unsettled licensing landscape on the Lower 230 Channels prevents incumbent licensees from being able to evaluate the channels offered to them in exchange for their upper-200 channel spectrum, resulting in their being uncertain that such channels are "comparable" or the most desirable ones available. Furthermore, Nextel believes that if EA licensing of the Lower 230 Channels were completed, it would likely be the high bidder in at least some

EAs, and thus be able to offer upper-200 channel incumbents better spectrum alternatives than it can today.

As discussed further below, the Commission should complete EA licensing of all of the 800 MHz SMR channels before the conclusion of the upper-200 channel involuntary negotiation period. Therefore, Nextel requests that the Lower 230 Channel auction be scheduled immediately and that the involuntary relocation period be extended for six months following the completion of the Lower 230 Channel auction. This reflects the fact that the now more than four-year old licensing freeze on Lower 230 Channels precludes the use of significant amounts of fallow spectrum. These channels would be "released" in the EA licensing process for use in relocation and for use by EA licensees.

Background

In the 800 MHz First Report and Order, the Commission restructured the licensing framework that governs the 800 MHz SMR service.¹ The Commission replaced site and frequency-specific licensing with a geographic-based system licensing similar to that used in other Commercial Mobile Radio Services ("CMRS"). The Commission designated the upper-200 channels of 800 MHz spectrum for geographic licensing, created channel blocks within EAs, and granted EA licensees the right to relocate incumbent licensees out of the upper-200 channels to comparable facilities. At the same time, the FCC tentatively concluded in the Second Further Notice of Proposed Rulemaking, that the Lower 230 Channels be converted to geographic area licensing. In the 800 MHz Second Report and Order, the Commission established EAs as the licensing area for the Lower 230 Channels, which include the lower 80 SMR channels and the 150 General Category channels, and determined that they would be licensed through competitive bidding.²

¹ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, 11 FCC Rcd 1463 (1995) (the "800 MHz First Report and Order").

² Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket 93-144, Second Report and Order, 12 FCC Rcd 19079 (1997) ("800 MHz Second Report and Order").

Following those Orders, the FCC held the upper-200 channel auction in the fall of 1997, and awarded 525 EA licenses by approximately June 1998. It was assumed that any outstanding issues surrounding the Lower 230 Channels would be quickly resolved and the Lower 230 Channel auction would be held shortly thereafter. However, this has not occurred and recent trade-press articles indicate that the Lower 230 Channel Auction may not be held this year.

Nextel believes expeditious completion of the Lower 230 Channel Auction is vital for the SMR industry and for increased competition in the CMRS marketplace. It will complete the transition from site-by-site licensing to a geographic licensing framework for the 800 MHz SMR service, fulfilling the Commission's goal of making it possible for SMR EA licensees to obtain the contiguous spectrum necessary to achieve competitive parity with Personal Communications Service ("PCS") and other CMRS operators, as required by the Omnibus Budget Reconciliation Act of 1993 (the "1993 Budget Act"). Given that the 1993 Budget Act provided a three-year transition – through August 1996 – for SMR licensees to assume the responsibility of CMRS status (e.g., E91 and universal service) it is beyond question that Congress intended SMR licensees to receive licensing parity and the benefits of CMRS status in the same time period. The 1993 Budget Act did not intend for SMR licensees to still be awaiting the actions needed for CMRS regulatory parity six and a half years later.

The Need for the Lower 230 Channel Auction

It has now been over two years since the conclusion of the upper-200 channel auction, with no scheduled date for the Lower 230 Channel auction, even though all regulatory obstacles to holding it have been eliminated. The FCC's Memorandum Opinion and Order on Reconsideration for the Lower 230 Channels was just recently published in the Federal Register and those rules are now effective.³ As a result, the auction rules for the Lower 230 Channel auction are in place. The FCC has greatly reduced the "backlog" of licensing issues impacting Lower 230 Channels, such as the Goodman/Chan

³ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket 93-144, Memorandum Opinion and Order on Reconsideration, DA 99-270, _____ FCC Rcd _____, 1999 FCC LEXIS 5063 (October 8, 1999) ("800 MHz Memorandum Opinion").

proceeding⁴, the Fresno Remand proceeding⁵ and the finder's preference backlog.

The FCC's delay has resulted in two major problems in negotiating relocation agreements with incumbents:

1. Upper-200 Incumbents Do Not Want to Relocate to Lower Channels Until After the Lower 230 Channel Auction. Incumbent licensees do not want to be relocated until the licensing landscape (for the Lower 230 Channels) has been resolved. For example, licensees do not want to be relocated to Lower 230 Channels until they know who the EA licensee is for those Lower 230 channels – particularly in cases where they themselves may bid on various EA licenses and then would prefer relocating to the one they win.

2. The Lack of Available Lower 230 Channels Will Continue to Impede EA Licensees Efforts in Finding Comparable Facilities for Incumbents. There are a substantial number of areas with unlicensed Lower 230 Channels which could be used to relocate incumbents were they available by assignment from the Lower Channel EA licensee. However, the ongoing licensing freeze on this spectrum hampers the EA winners in their ability to orderly migrate incumbents. Further, the Commission's promise that EA winners could assemble contiguous spectrum through the relocation process is threatened by the reluctance of upper-200 incumbents to move until the Lower 230 Channel licensing environment is settled. Finally, a fair number of the remaining incumbents are located in rural areas where EA winners have not accumulated the number of channels necessary to retune every incumbent. Upper-200 EA licensees will have strong incentives to bid on Lower 230 Channel EAs to obtain the spectrum necessary for such relocations. Thus, with the auction of the Lower 230 Channels, there will be sufficient spectrum in which to relocate all upper-200 channel incumbents.

⁴ Daniel R. Goodman, Receiver; Dr. Robert Chan, Petition for Waiver of Sections 90.633(c) and 1.1102 of the Commission's Rules, Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd 21944 (1998) ("Goodman/Chan Order").

⁵ In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Memorandum Opinion and Order on Remand, PR Docket No. 93-144, DA 99-399, ___ FCC Rcd ___, 1999 FCC LEXIS 6557 (December 23, 1999) (the "Fresno Remand Order").

Besides facilitating the upper-200 channel relocation process, completing the Lower 230 Channel auction will enable EA winners to make more efficient use of spectrum that is currently lying fallow. For example, Nextel's research shows unused Lower 230 Channel spectrum in major markets, which is unavailable to any SMR licensee due to the ongoing licensing freeze. Thus, it is in the public interest to make this spectrum available to providers willing to put this spectrum to its best and most productive use.

Nextel recognizes that the FCC has a Congressionally mandated auction scheduled for May 2000 (at 700 MHz) and a planned auction for the C and F Block PCS licenses in July 2000. However, the FCC is well equipped to run simultaneous auctions, given its extensive experience in the auction process, the FCC's auction software upgrades and the straight forward nature of the Lower 230 Channel auction. The Lower 230 Channel Auction can be accomplished quickly and efficiently, given the existence of bidders who are familiar with the FCC's SMR auction processes.

Request for an Extension of the Involuntary Relocation Period

As a result of the delay in scheduling the Lower 230 Channel auction, the Commission's goal of enabling upper-200 EA licensees to assemble contiguous spectrum is directly impacted. The best way to solve this problem is to immediately schedule and hold the Lower 230 Channel auction. The longer that auction is delayed, the longer incumbent upper-200 channel licensees will resist relocations. Second, the Commission should extend the involuntary negotiation period six months after the conclusion of the Lower 230 Channel auction. This will result in a better selection of channels for incumbent relocation and a more orderly transition for incumbents and their end users.

Kathleen O'Brien Ham, Deputy Chief
March 2, 2000
Page 6

We would be happy to schedule a meeting to discuss this matter at your earliest convenience. We can be reached at (703) 433-4141.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert S. Foosaner", with a stylized flourish at the end.

Robert S. Foosaner
Senior Vice President
and Chief Regulatory Officer

Lawrence R. Krevor
Senior Director – Government Affairs

James B. Goldstein
Attorney – Government Affairs